

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNIVERSAL ENTERTAINMENT
 CORPORATION,

Plaintiff,

v.

ARUZE GAMING AMERICA, INC., et al.,

Defendants.

Case No. 2:19-cv-01657-RFB-NJK

Order

[Docket Nos. 154, 158]

Pending before the Court are two motions to seal. Docket Nos. 154, 158. The Court will address each motion in turn.

I. STANDARDS

The general presumption is that the public has the right to access judicial filings. *See, e.g., Nixon v. Warner Commc'ns Inc.*, 435 U.S. 589, 597 (1978). Certain types of documents are exempt from this presumption and have traditionally been kept secret. *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006). Ninth Circuit “case law has identified two categories of documents that fall in this category: grand jury transcripts and warrant materials in the midst of a pre-indictment investigation.” *Id.* The presumption of public access can, however, be overcome for documents not traditionally kept secret. *San Jose Mercury News, Inc. v. U.S. Dist. Ct.*, 187 F.3d 1096, 1102 (9th Cir. 1999).

In determining whether to seal documents, the applicable standard “turns on whether the materials are submitted in conjunction with a dispositive or non-dispositive motion.” *Victory Sports & Ent., Inc. v. Pedraza*, 2019 WL 2578767, *1 (D. Nev. 2019). A motion is dispositive when it is “is more than tangentially related to the merits of a case.” *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1101 (9th Cir. 2016). The sealing of dispositive motions and related documents is evaluated under a “compelling reasons” standard. *Kamakana*, 447 F.3d at 1179. *Id.* A party must support its motion to seal dispositive filings by “articulat[ing] compelling reasons

1 supported by specific factual findings.” *Id.* at 1178. Sealing nondispositive motions requires a
 2 “particularized showing” under a “good cause” standard. *Id.* at 1180 (citing *Foltz v. State Farm*
 3 *Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1138 (9th Cir. 2003)).

4 **II. Docket No. 154**

5 Defendants ask to seal portions of their answer to Plaintiff’s First Amended Complaint and
 6 certain exhibits thereto. Docket No. 154; *see also* Docket No. 155 (Defendants’ answer).
 7 Defendants seek to seal Exhibits A, B, D, E, F, G, I, K, R, and T and the portions of their Answer
 8 that discuss those exhibits. Docket No. 154 at 2.¹ A party seeking sealing of exhibits to an answer
 9 must meet the compelling reasons standard. *See VLSI Tech. LLC v. Intel Corp.*, 2021 WL 6063965,
 10 *1-*2 (N.D. Cal. 2021). Defendants seek sealing on the basis that Plaintiff designated the relevant
 11 documents “Confidential” or “Highly Confidential.” *Id.* A document being designated “Confidential”
 12 or “Highly Confidential” by a party does not in itself constitute compelling reasons for sealing.² *See*
 13 *Kamakana*, 447 F.3d at 1179. Defendants also fail to address whether any of the documents could
 14 be partially redacted to protect any sensitive information. *In re Roman Cath. Archbishop of*
 15 *Portland in Or.*, 661 F.3d 417, 425 (9th. Cir. 2011). The Court, therefore, cannot find that
 16 compelling reasons exists to seal Exhibits A, B, D, E, F, G, I, K, R, and T and the portions of
 17 Defendants’ Answer that discuss those exhibits.

18 **III. Docket No. 158**

19 Defendants renew their request to seal their opposition to Plaintiff’s motion for leave to
 20 file a first amended complaint. Docket No. 158; *see also* Docket Nos. 134 (initial motion to seal),
 21 135 (Defendants’ response). Defendants seek to seal Exhibits 2, 3, 4, 5, 9, 10, 11 and the portions
 22 of their response that discuss those exhibits. Docket No. 158 at 2-3. Defendants submit that good
 23 cause exists to seal Exhibits 2, 3, 4, and 5 because they contain documents designated
 24

25 ¹ References to specific page numbers in filings are references to the CM/ECF pagination.

26 ² Defendants reference the stipulated protective order and this Court’s companion order
 27 entered in the related case. *See* Docket Nos. 154 at 3, 158 at 2-3. The Court notes that no protective
 28 order or order governing the filing of designated documents has been entered in this related but
 procedurally distinct case.

1 “Confidential” or “Highly Confidential” by Plaintiff. *Id.* at 2. As discussed above, such
2 designation is not sufficient to justify sealing.

3 Defendants submit that good cause exists to seal Exhibits 9 and 10 because they contain
4 confidential financial and business information.³ *Id.* at 3. They submit that good cause exists to
5 seal Exhibit 11 because it contains confidential information regarding the impact of certain
6 statements made by Plaintiff on their business operations. *Id.* Defendants further submit that
7 disclosure of these exhibits would hurt their ability to conduct business negotiations and undermine
8 their competitive standing. *Id.* Protecting “business information that might harm a litigant’s
9 competitive standing” justifies sealing documents. *Ctr. for Auto Safety*, 809 F.3d at 1097 (quoting
10 *Nixon*, 435 U.S. at 598-99). The Court, therefore, finds that Exhibits 9, 10, and 11 and the portion
11 of Defendants’ response discussing those exhibits are properly sealed.

12 **XVI. Conclusion**

13 For the reasons discussed above:

14 Defendants’ motion to seal portions of their answer to Plaintiff’s First Amended Complaint
15 and certain exhibits thereto is **DENIED** without prejudice. Docket No. 154. Plaintiff must file a
16 motion to seal explaining why the specified documents should remain under seal pursuant to
17 applicable standards by **January 17, 2023**. The Clerk’s Office is **INSTRUCTED** to retain the
18 subject documents under seal pending further determination by the Court.

19 Defendants’ renewed motion to seal their opposition to Plaintiff’s motion for leave to file
20 a first amended complaint. thereto is **GRANTED** in part and **DENIED** in part. Docket No. 158.
21 Defendants’ motion is **GRANTED** as to Exhibits 9, 10, and 11. Defendants’ motion is **DENIED**
22 without prejudice as to Exhibits 2, 3, 4, and 5. Plaintiff must file a motion to seal explaining why
23 the remaining specified documents should remain under seal pursuant to applicable standards by

24 _____
25 ³ The Court previously noted that motions to seal a motion for leave to amend must meet the
26 good cause standard. Docket No. 141 at 8. There is a split of authority as to whether procedural
27 motions, such as a motion for leave to amend, must satisfy either the good cause or compelling
28 reasons standard. *Compare GoDaddy.com LLC v. Rpost Commc’ns Ltd.*, 2016 WL 1158851, *2
(D. Ariz. 2016) and *Musial v. Telesteps Inc.*, 2015 WL 13840687, *1 (D. Ariz. 2015) with
Echologics, LLC v. Mueller Int’l, LLC, 2022 WL 17682657, *1-*2 (S.D. Cal. 2022). In the interest
of certainty, the Court applies the more demanding standard here. Regardless, Defendants have
shown compelling reasons exist to seal the subject exhibits.

1 **January 17, 2023.** The Clerk's Office is **INSTRUCTED** to retain the subject documents under
2 seal pending further determination by the Court.

3 In the event Plaintiff does not file motions to seal by **January 17, 2023**, Defendants must
4 file their answer, and a notice of compliance with their opposition redacted in accordance with the
5 above findings, on the public docket, no later than **January 31, 2023**.

6 IT IS SO ORDERED.

7 Dated: December 27, 2022


Nancy J. Koppe
United States Magistrate Judge